



Independent  
Review Office

**UNREASONABLE  
CONDUCT POLICY  
AND PROCEDURE**

24 October 2022

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## 1. INTRODUCTION

### 1.1 Statement of support

The Office of the Independent Review Officer (referred to as the 'Office', or 'IRO') is committed to being accessible and responsive to all people who approach us for assistance with a complaint or to otherwise utilise our services. At the same time, the success of our Office depends on:

- our ability to do our work and perform our functions in the most effective and efficient ways possible
- the health, safety and security of our staff
- our ability to allocate our resources equitably to all the people who make use of our services or seek our assistance.

When people behave unreasonably in their dealings with us, their conduct can significantly affect our performance. As a result, the IRO will take proactive and decisive action to manage the conduct of any person that negatively and unreasonably affects the health and safety of our staff, or the effective and equitable use of our resources.

I authorise and expect all staff to implement the strategies provided in this Policy, and will support those who do so in accordance with the Policy.

In implementing this Policy, we do, however, need to recognise that the aim is not to punish the person, but to manage the impacts of the person's conduct on our staff and our ability to deliver our services efficiently, effectively and equitably. In this regard, the Policy is to be applied cautiously and sparingly, and in the least restrictive ways possible. It is not to be applied in ways that go beyond what is appropriate and necessary to manage a person's conduct, and must always be proportionate to the individual's personal circumstances.

**Simon Cohen**

**Independent Review Officer**

## 2. OBJECTIVES

### 2.1 Policy aims

This Policy is intended to assist all staff members at the IRO to better manage unreasonable conduct (UC). Its aim is to ensure that all staff:

- feel confident and supported in taking action to manage UC
- act fairly, consistently, honestly and appropriately when responding to UC
- are aware of their roles and responsibilities in relation to the management of UC and how this Policy is to be used
- understand the types of circumstances when it may be appropriate to manage UC using one or more of the following mechanisms:
  - the strategies provided in the NSW Ombudsman's *Managing unreasonable conduct by a complainant: A manual for frontline staff, supervisors and senior managers (3<sup>rd</sup> edition)* (the 'practice manual')<sup>1</sup>
  - alternative dispute resolution strategies to deal with conflicts between people seeking or using our services and members of our staff
- have a clear understanding of the criteria that will be considered before we decide to change or restrict a person's access to our services
- are aware of the processes that will be followed to record and report UC incidents, as well as the procedures for consulting and notifying people about any proposed actions or decisions to change or restrict their access to our services
- are familiar with the procedures for reviewing decisions made under this Policy, including specific timeframes for review.

## 3. DEFINING UNREASONABLE CONDUCT

### 3.1 Unreasonable conduct (UC)

Most people who seek our services act reasonably and responsibly in their interactions with us, even when they are experiencing high levels of distress, frustration and anger about their workers compensation related issue. However, in a very small number of cases, some people behave in ways that are inappropriate and unacceptable – despite our best efforts to help them. They can be aggressive and verbally abusive towards our staff, threaten harm and violence, bombard our office with unnecessary and excessive phone calls and emails, make inappropriate demands on our time and our resources, and persistently try to change the decision on matters that have already been appropriately dealt with.

### 3.2 Whose conduct?

This Policy applies to the conduct of any person who has sought to use the services provided by the IRO, is currently receiving or utilising those services, or has previously received or utilised such services.

The IRO's services are any service available to those who we exist to serve, who include injured workers or their representative or spokesperson or union representatives, and lawyers including solicitors and barristers.

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<sup>1</sup> [https://www.ombo.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/125756/Managing-unreasonable-conduct-by-a-complainant-manual.pdf](https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0008/125756/Managing-unreasonable-conduct-by-a-complainant-manual.pdf)

### **3.3 What is ‘unreasonable conduct’?**

UC is any conduct which, because of its nature, frequency or seriousness, raises substantial health or safety issues for our staff, or significantly impacts on our resources and ability to equitably provide our services to other people who are receiving, utilising or may seek those services.

For the purpose of responding to UC, it is convenient to divide such conduct into five categories, each with different management strategies:

1. Unreasonable persistence
2. Unreasonable demands
3. Unreasonable lack of cooperation
4. Unreasonable arguments
5. Unreasonable behaviours.

### **3.4 Unreasonable persistence**

Unreasonable persistence is continued, incessant and unrelenting conduct by a person that has a disproportionate and unreasonable impact on our staff, delivery of services, time or other resources. Some examples of unreasonably persistent conduct include:

- an unwillingness or inability to accept reasonable and logical explanations or final decisions on matters that have been comprehensively considered and dealt with
- persistently demanding a review simply because it is available and without putting forward valid arguments or evidence to suggest that the original decision was wrong or lacking in merit, or the decision-making process was flawed
- pursuing and exhausting all available internal and external review options solely on the basis that the person does not like the decision and refuses to accept further action cannot or will not be taken on their matter or that the decision will not change
- continually reframing a matter in an effort to have it reopened or reviewed
- Bombarding our staff/organisation with phone calls, visits, letters or emails (including cc'd correspondence) after repeatedly being asked not to do so
- contacting different people within our organisation and/or externally to seek a different outcome or a more sympathetic response to their matter (i.e. what is referred to as internal and external ‘forum shopping’).

For more examples of unreasonable persistence, see the relevant pages in the practice manual (at pages 21-31).

### **3.5 Unreasonable demands**

Unreasonable demands are any demands (express or implied) that are made by a person that have a disproportionate and unreasonable impact on our staff, delivery of services, time or other resources. Some examples of unreasonable demands include:

- issuing instructions and making demands about how we have handled/should handle their matter, the priority it was/should be given, or the outcome that was/should be achieved
- insisting on talking to a more senior person or the Independent Review Officer personally when it is not appropriate or warranted
- emotional blackmail and manipulation with the intention to guilt trip, intimidate, harass, shame or portray themselves as being victimised, and therefore establish that they

warrant special treatment or priority when on, an objective assessment, this is either not the case, or the circumstances do not justify/warrant special treatment or priority

- insisting on outcomes that are not possible or appropriate in the circumstances (e.g. for someone to be sacked or prosecuted, an apology and/or compensation when there is no reasonable basis for their position)
- repeatedly sending the same material with the aim of convincing the IRO to make a particular decision or to agree with their position, or repeatedly sending unconnected and irrelevant information
- demanding services that are of a nature or scale that we cannot provide when this has been explained to them repeatedly.

For more examples of unreasonable demands, see relevant pages in the practice manual (at pages 32-45).

### **3.6 Unreasonable lack of cooperation**

Unreasonable lack of cooperation is an unwillingness and/or inability by a person to cooperate with us, or the applicable systems and processes, that results in a disproportionate and unreasonable use of our services, time and/or resources. Some examples of unreasonable lack of cooperation include:

- sending a constant stream of voluminous and/or disorganised information without clearly defining any issues of concern or explaining how they relate to the core issues they have raised with us, in circumstances where it is clear that the person is capable of doing this
- providing little or no detail about their issue of concern, or presenting information in 'dribs and drabs'
- refusing to follow or accept our instructions, suggestions or advice without a clear or justifiable reason for doing so
- arguing frequently and/or with extreme intensity that a particular outcome or decision is the correct one in the face of valid contrary arguments and explanations
- displaying unhelpful behaviour – such as withholding information, acting dishonestly or deceptively, or misquoting others
- blatant/repeated disregard for IRO Policies, Guidelines, agreements and practice standards where they exist.

For more examples of unreasonable lack of cooperation see the relevant pages in the practice manual (at pages 46-51).

### **3.7 Unreasonable arguments**

Unreasonable arguments include any arguments that are not based in reason or logic, that are incomprehensible, clearly false or inflammatory, trivial or incoherent and that disproportionately and unreasonably impact upon our organisation, staff, delivery of services, time, or other resources. Arguments are unreasonable when they:

- fail to follow a logical sequence
- are not supported by any evidence and/or are based on conspiracy theories and lead a person to reject all contrary arguments that have a clear objective basis
- are trivial when compared to the amount of time, resources and attention that the person demands
- are false, inflammatory or defamatory



For more examples of unreasonable arguments, see the relevant pages in the practice manual (at pages 52-59).

### **3.8 Unreasonable behaviour**

Unreasonable behaviour is conduct that is unreasonable in all circumstances – regardless of how stressed, angry or frustrated a person may be – because it unreasonably compromises the health or safety of our staff, other service users or the person himself/herself, or the security of our premises. Some examples of unreasonable behaviours include:

- acts of aggression, verbal abuse, and derogatory, racist, discriminatory or grossly inflammatory or defamatory remarks
- harassment, intimidation or physical violence
- abusive, consistently rude, confronting and/or threatening correspondence or conduct
- threats of harm to self or third parties, threats with a weapon or threats to damage property, including bomb threats
- stalking (in person or online).

For more examples of unreasonable behaviour, see the relevant pages in the practice manual (at pages 60-72).

All staff should note that the IRO has a zero-tolerance policy towards any harm or abuse of, or threats directed towards, them or others. All staff are directed to respond to any conduct of this kind as set out in this Policy (in particular the procedures set out in [Appendix B - Procedure for responding to abuse and threats of harm to self or others](#)).

### **3.9 The IRO experience of unreasonable conduct**

The most common UC identified by IRO staff is ‘unreasonable persistence’, for example:

- where the person has been informed that all the powers of the Independent Review Officer have been exhausted, but continues to raise historical issues where there is no action the IRO can take
- where staff provide the same information to a person who raises the same issue again and again
- where a person is manipulative and keeps angling for the response the person wants, and either does not listen to or disputes any contrary views
- where a person rings back to ‘forum shop’ for a different answer from a different person, often based on a reframing of the original question, with any inconsistencies in responses (including different phrasing of responses that still essentially convey the same answer) being used to argue for a more favourable response
- where a lawyer repeatedly relies on the same material or information with the expectation to receive a different outcome after further engagement (including any Approved Lawyer through the IRO Independent Legal Assistance and Review Service).

The most debilitating or difficult conduct that staff are likely to have to deal with is ‘unreasonable behaviour’, such as aggression and abuse, emotional blackmail, and complex psychological/mental health issues, particularly where there is nothing they can say or do that can help the person.

## 4. ROLES AND RESPONSIBILITIES

### 4.1 All staff

All staff are responsible for familiarising themselves with this Policy, including the NSW Ombudsman's guidance on the Individual Rights and Mutual Responsibilities of the Parties to a Complaint<sup>2</sup> (in [Appendix A - Individual rights and mutual responsibilities of people receiving the services of the IRO and the staff of the IRO](#)). Staff are also encouraged to explain the contents of this document to any persons they deal with who are engaging in UC, and possibly people who are exhibiting the early indications of UC.

Staff are also encouraged and authorised to use the strategies and scripts provided in the practice manual to manage UC, in particular, those for:

- managing unreasonable persistence: pages 21 – 31.
- managing unreasonable demands: pages 32 – 45.
- for managing unreasonable lack of cooperation: pages 46 – 51.
- managing unreasonable arguments: pages 52 – 59.
- managing unreasonable behaviours: pages 60 – 72.

However, it must be emphasised that any strategies that effectively change or restrict a person's access to IRO services must be considered by the Independent Review Officer as provided in this Policy.

Staff are also responsible for recording and reporting all UC incidents they experience or witness (as appropriate) to their Manager or Director within 24 hours of the incident occurring, using [Appendix C - Sample UC incident form \(restrictions to access\)](#) or [Appendix CA – Sample UC incident form \(no restrictions to access\)](#). A file note of the incident should also be copied into the Resolve Case Management System.

Staff understand that those approaching the IRO can be vulnerable, and staff are kind, courteous and consistent in their behaviour towards all people. The IRO has a strong focus on ensuring that those experiencing vulnerability are supported and this is demonstrated by:

- the opportunity to utilise an interpreting service for those who are not confident to communicate in English
- provision of services through the National Relay Service
- a simple and easy process for an injured person to nominate someone else to act as their representative in dealing with the IRO.

The IRO aims to recruit staff who understand the importance of showing empathy, respect and compassion to those who are vulnerable. To that end, the IRO recruitment process requires prospective job candidates to demonstrate these skills to the interview panel, as they are fundamental in the effective delivery of services that the IRO provides to injured persons.

### 4.2 The Independent Review Officer

The Independent Review Officer, in consultation with relevant staff, has the responsibility and authority to change or restrict a person's access to our services in the circumstances identified

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<sup>2</sup> NSW Ombudsman '*Managing unreasonable complainant conduct: A model policy*', at pages 17-20:  
[https://www.ombo.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/128092/Managing-unreasonable-complainant-conduct-a-model-policy.pdf](https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0004/128092/Managing-unreasonable-complainant-conduct-a-model-policy.pdf)

in this Policy. When doing so, they will take into account the criteria in **Part 7.2** below (adapted into a checklist in **Appendix D - Sample checklist for the [nominated senior manager] to consider when deciding to modify and/or restrict a person's access**), and will aim to impose any service changes/restrictions in the least restrictive ways possible. The aim, when taking such actions, will not be to punish the person, but rather to manage the impacts of their conduct on the effective operation of the Office.

When applying this Policy, the Independent Review Officer will also aim to keep at least one open line of communication with a person. However, in extreme situations, all forms of contact may need to be restricted for some time to ensure the health and safety of our staff and/or third parties, or the safety of our premises.

The Independent Review Officer is also responsible for recording, monitoring and reviewing all cases where this Policy is applied to ensure consistency, transparency and accountability in the application of this Policy. The Independent Review Officer will also manage and keep a file record of all cases where this Policy is applied.

### **4.3 Directors and Managers**

All Directors and Managers are responsible for supporting staff to apply the strategies in this Policy, as well as those in the practice manual. Directors and Managers are also responsible for ensuring compliance with the procedures set out in this Policy, and ensuring that all staff have received training on dealing with UC, either prior to appointment or as soon after joining the office as is practicable.

Following an interaction with a person that involved UC, or was otherwise stressful, Directors and Managers are responsible for providing affected staff members with the opportunity to debrief and discuss their concerns either formally or informally. Directors and Managers will also ensure that staff are provided with proper support and assistance, including medical and/or police assistance, and support through programs such as Employee Assistance Programs (EAPs), if necessary.

Depending on the circumstances, Directors and Managers may also be responsible for arranging other forms of support for staff, which are detailed in **Part 12** of this Policy.

## **5. RESPONDING TO AND MANAGING UC**

### **5.1 Changing or restricting a person's access to IRO services**

UC incidents will generally be managed by limiting or adapting the ways that the IRO interacts with and/or delivers services to people by restricting:

- **who they have contact with** – e.g. advising the person that all contact with the IRO must be through an identified staff member
- **what they can raise with us** – e.g. advising the person that only certain subject matter in any future communications from the person will be considered and responded to
- **when they can have contact** – e.g. advising the person that further contact with our organisation will only be accepted at a particular time on particular days for a specified period, or otherwise curbing the frequency of their contact with us
- **where they can make contact** – e.g. advising the person about the locations where staff will conduct face-to-face interviews (in secure premises or areas of the office)
- **how they can make contact** – e.g. advising the person about any other limits or modifications to the forms of contact that the person can have with the IRO. This can include modifying or limiting telephone and written communications or face-to-face interviews, prohibiting access to IRO premises, further contact with the IRO to be

through a representative only, taking no further action, or terminating the IRO's services altogether.

**Note:** For IRO Approved Lawyers, UC may result in access to services being withdrawn in accordance with the Application and Agreement to be an IRO Approved Lawyer and the IRO's Practice Standards.

When using any of the options provided in this section, discretion will need to be used to adapt them to suit the person's personal circumstances, level of competency, literacy skills, etc. In this regard, more than one strategy may need to be used in individual cases to ensure their appropriateness and efficacy.

## **5.2 Who – limiting a person to a sole contact point**

Where a person tries to forum shop internally within our organisation, changes the issues they are raising repeatedly, reframes their issue of concern, or raises an excessive number of issues, it may be appropriate to restrict their access to a single staff member (a sole contact point) who will exclusively manage their matter(s) and interactions with our office. This will ensure that they are dealt with consistently, and may minimise the chances for misunderstandings, contradictions and manipulation.

To avoid staff 'burn out', the sole contact officer's supervisor will provide them with regular support and guidance as needed. Also, the Independent Review Officer will review the arrangement every three months to ensure that the officer is managing/coping with the arrangement.

People who are restricted to a sole contact person will, however, be given the contact details of one additional staff member who they can contact, but only if their primary contact is unavailable (e.g. where the contact person is on leave or otherwise unavailable for an extended period of time). Details of who is the 'sole contact' for a specific individual will be recorded in the IRO Case Management System, Resolve, under 'Party Details' so that other staff know who to refer any enquiry to if they are contacted by the relevant individual.

## **5.3 What – restricting the subject matter of communications that will be considered**

Where people repeatedly send any form of written communication, or make telephone calls that raise trivial or insignificant issues, contain inappropriate, abusive or threatening content or relate to a matter/issue that has already been comprehensively considered and/or internally reviewed (once) by our Office, we may restrict the issues/subject matter the person can raise with us and that we will respond to. For example, we may:

- refuse to respond to correspondence that raises an issue that: has already been dealt with comprehensively; raises a trivial issue; or is not supported by clear/any evidence. The person is to be advised that future correspondence of this kind will be read and filed without acknowledgement unless we decide that we need to pursue it further, in which case, we may do so on our own motion.
- refuse to respond to correspondence, or that fails to address or ignores a request to respond to previous requests for information which would assist the IRO in providing service to the person.
- restrict the person to one new matter/issue per month. Any attempts to circumvent this restriction, for example, by raising multiple matters/issues in the one letter, email or telephone conversation, may result in further restrictions being placed on their access.
- return correspondence to the person and require them to remove any inappropriate content before we will agree to consider its contents. A copy of the inappropriate correspondence will also be made and kept for our records to identify repeat/further UC incidents.

#### **5.4 When – limiting when and how a person can contact the IRO**

The IRO may limit when and/or how a person can interact with the IRO if the person's telephone, written or face-to-face contact:

- places an unreasonable demand on our time or resources because it is overly lengthy, disorganised or includes voluminous documentation, or
- affects the health or safety of staff because it involves behaviour that is persistently rude, threatening, harassing, abusive or aggressive.

#### **Contact restrictions**

This may include:

- limiting the person's telephone calls or face-to-face interviews to a particular time of the day and/or days of the week
- limiting the length or duration of telephone calls, written correspondence or face-to-face interviews. For example, the person may be advised that:
  - telephone calls will be limited to 10 minutes at a time and will be politely terminated at the end of that time period
  - lengthy written communications will be restricted to a maximum of five typed or written pages, single sided, and in font size 12, or it will be sent back to the person to be organised and summarised (this option should only be used in cases where the person is clearly capable of summarising the information and refuses to do so)
  - face-to-face interviews will be limited to a maximum of 45 minutes
- limiting the frequency of telephone calls, written correspondence or face-to-face interviews. Depending on the natures of the service(s) provided, the IRO may limit:
  - telephone calls to one every two weeks/month,
  - written communications to one every two weeks/month
  - face-to-face interviews to one every two weeks/month.

The IRO will consider reasonable adjustments for individuals, if deemed appropriate and necessary.

#### **Correspondence restrictions**

For irrelevant, overly lengthy or disorganised correspondence, the person may also be advised that the correspondence will not be further considered unless the person clearly identifies how the information or supporting materials in the correspondence relates to the central issues that the IRO has identified in the matter.

For frequent letters or emails, the person may also be advised that all further emails will only be accepted if sent to a particular email account (e.g. the IRO's general office email account).

Where a person immediately responds to emails with angry emails disagreeing and/or raising related or new issues, slow down the process to facilitate cooling off, for example, by advising the person that all further responses will be by Australia Post. In extreme cases, blocking email access altogether and advising the person that any further correspondence will only be accepted if delivered by Australia Post may be appropriate.

#### **Responding to offensive or threatening correspondence**

Replying to offensive or threatening content in written communications by:

- replying to emails advising that the content of an email will not be responded to and has been deleted

- returning letters advising that no action will be taken until correspondence is received that does not include such content.

### **Writing only restrictions**

When a person is restricted to 'writing only', they may be restricted to written communications through:

- Australia Post only
- email only to a specific staff email or our general office email account
- some other relevant form of written contact, where applicable.

If a person's contact is restricted to 'writing only', the Independent Review Officer will clearly identify the specific means that the person can use to contact the IRO (e.g. Australia Post only). A person will be advised if it is not suitable for them to enter the IRO's premises to hand deliver their written communication.

In such circumstances, the person will also be advised that any communications that are received by the Office in a manner that contravenes the 'writing only' restriction will either be returned to the person, or read and filed without acknowledgement.

### **5.5 Where – limiting face-to-face interviews to secure areas**

While it is rare for people seeking or using the services of the IRO to attend at our premises, where this does occur and the person is violent or overtly aggressive, unreasonably disruptive, threatening or demanding or makes frequent unannounced visits to our premises, the IRO will consider restricting any further face-to-face contact with the person.

These restrictions may include:

- restricting access to particular secured premises or areas of the office (such as the reception area or a secured room)
- restricting the person's ability to attend the IRO's premises to specified times of the day and/or days of the week only (for example, when additional security is available or to times/days that are less busy)
- allowing the person to attend the IRO's premises on an 'appointment only' basis, and only with specified staff (prior to any such meetings, staff should always make arrangements for support and assistance of a colleague for added safety and security)
- banning the person from attending the IRO's premises altogether and specifying the only alternative form of contact (e.g. 'writing only' or 'telephone only' contact).

### **Contact through a representative only**

In cases where the IRO cannot completely restrict contact with a person and their conduct is particularly difficult to manage, the IRO may also impose the restriction that any further contact is to be through a support person or representative only. The support person may be nominated by the person concerned, however, the nominee must be approved by the Independent Review Officer.

When assessing a nominated representative's/support person's suitability, the Independent Review Officer should consider factors such as the nominee's competency and literacy skills, demeanour/behaviour and relationship with the person concerned. If the Independent Review Officer determines that the nominated representative/support person is unsuitable or may exacerbate the situation, the person should be asked to nominate another person. The IRO may assist them in this regard.

## 5.6 Completely terminating a person's access to IRO services

In rare cases, and as a last resort when all other possible strategies have been considered and/or attempted, the Independent Review Officer may decide that it is necessary for the IRO to completely restrict a person's contact with the Office and their access to our services.

A decision to have no further contact with a person should only be made if it appears that the person is unlikely to modify the problematic conduct, particularly where the conduct poses a significant risk to our staff or other parties because it has involved one or more of the following types of behaviour:

- assault, acts of aggression, verbal and/or physical abuse, threats of harm, harassment, intimidation, stalking
- damage to property while on our premises
- threats with a weapon or other items that could be used to harm another person or themselves
- physically preventing a staff member from moving around freely within our premises
- behaviours that are otherwise unacceptable

In such cases, the person is to be sent a letter notifying them that access has been modified and/or restricted, as outlined in **Part 7.4** below.

A person's access to our services and our premises may also be restricted (directly or indirectly) using legal mechanisms (for example, under the *Crimes (Domestic and Personal Violence) Act 2007*) such as through an apprehended violence order, to protect members of our staff from personal violence, intimidation or stalking.

## 6. ALTERNATE DISPUTE RESOLUTION

### 6.1 Using alternative dispute resolution strategies to manage conflicts

We need to accept that sometimes we get it wrong, and that this can trigger or exacerbate UC. Mistakes can be made, cases can be mishandled, processes and procedures can be overly complex or unresponsive to the needs of certain people, and delays may occur. In these circumstances, and in any circumstance where it appears that the IRO or our staff have contributed to a person's UC, we should immediately rectify the problem – including providing the person with an apology. For further advice on making apologies, see: **Apologies – A practical guide**<sup>3</sup>, NSW Ombudsman. If remediation does not work in such circumstances, and our relationship with the person concerned has broken down, it may be necessary to organise alternative dispute resolution approaches ('ADR'), such as mediation or conciliation, to resolve the issue and rebuild the relationship with the person to the extent possible.

In other circumstances, if the Independent Review Officer determines that we cannot terminate our services to a person in a particular case, the IRO may consider using ADR such as mediation or conciliation to resolve the conflict with the person and attempt to rebuild a workable relationship with them.

If ADR is considered to be an appropriate option in a particular case, the ADR is to be conducted by an independent third party to ensure transparency and impartiality.

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<sup>3</sup> [https://www.ombo.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/124591/Apologies\\_A-practical-guide.pdf](https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0004/124591/Apologies_A-practical-guide.pdf)

However, in some UC situations, ADR may not be an appropriate or effective strategy, particularly if the person is uncooperative or resistant to compromise. Therefore, each case will be assessed on its own facts to determine the appropriateness of this approach.

## **7. PROCEDURE TO BE FOLLOWED WHEN CHANGING OR RESTRICTING A PERSON'S ACCESS TO OUR SERVICES**

### **7.1 Consulting with relevant staff**

If and when a Manager or Director receives a UC incident form from a staff member, the staff member will be contacted to discuss the incident. They will discuss:

- the circumstances that gave rise to the UC incident, including the person's situation, personal and cultural background, and perspective
- the impact of the person's conduct on the IRO, the health or safety of relevant staff, our time, resources, etc
- the person's responsiveness to the staff member's warnings/requests to stop the behaviour
- any actions the staff member has taken to manage the person's conduct
- any suggestions made by relevant staff on ways that the situation could be managed.

### **7.2 Criteria to be considered**

Following consultation with relevant staff, the Manager or Director will search the Resolve Case Management System for information about the person's prior interactions with the IRO. The following criteria will also be considered:

- whether the conduct in question involved overt anger, aggression, violence or assault (which is unacceptable in all circumstances)
- whether the person's issue/matter has merit
- the likelihood that the person will modify their conduct/behaviour if they are given a formal warning about that conduct
- whether changing or restricting access to our services is likely to be effective to manage the person's behaviour
- whether changing or restricting access to our services will affect the person's ability to meet their obligations under the workers compensation legislation or policies and guidelines made pursuant to the legislation
- whether changing or restricting access to our services in relation to an Approved Lawyer will affect their ability to meet their obligations to their clients or negatively impact their clients
- whether changing or restricting access to our services will have an undue impact on the person's welfare, livelihood or dependents etc
- whether the person's circumstances have contributed to the behaviour, for example, the person's cultural background may mean their communication patterns differ from those of our staff or IRO's standards, or the person is experiencing vulnerability and is under significant stress as a result of one or more of the following:
  - homelessness
  - physical disability
  - illiteracy or other language or communication barrier
  - mental or other illness
  - personal crises



- substance or alcohol misuse
- whether the person's conduct/behaviour in the circumstances was moderately disproportionate, grossly disproportionate or not at all disproportionate, and
- whether there are any statutory provisions that would limit the types of limitations that can be put on the person's contact/access to our services or the Office (e.g. to make applications under the *Government Information (Public Access) Act 2009* ('GIPA Act') or the *Privacy and Personal Information Protection Act 1998* ('PIIP Act')).

Once the Manager or Director has considered these factors, a recommendation will be made to the Independent Review Officer as to the appropriate course of action. This may involve formal or informal options for dealing with the person's conduct, which may include one or more of the strategies provided in the practice manual<sup>4</sup> and this Policy.

See [Appendix D - Sample checklist for the Independent Review Officer to consider when recommending whether to modify and/or restrict a person's access](#).

### 7.3 Providing a warning letter

Unless a person's conduct poses a substantial risk to the health or safety of staff or third parties, the Independent Review Officer will provide the person with a written warning about their conduct in the first instance. This warning letter or email will:

- specify the date, time and location of the UC incident(s)
- explain why the person's conduct was clearly or reasonably perceived to be problematic
- list the types of access modifications and/or restrictions that may be imposed if the conduct or behaviour continues (note: not every possible restriction needs to be listed only those that are most relevant)
- provide clear and full reasons for the warning being given
- include an attachment of the IRO's *Practice Standards and Application and Agreement to be an IRO Approved Lawyer* and/or briefly state the standard of behaviour that is expected of the person based on the NSW Ombudsman guidance in [Appendix A](#) (as appropriate)
- provide the name and contact details of the staff member who the person can contact about the letter
- be signed by the Independent Review Officer.

See [Appendix E - Sample warning letter](#).

### 7.4 Providing a notification letter

If a person's conduct continues after they have been given a written warning or in extreme cases of overt aggression, violence, assault or other unlawful/unacceptable conduct, the Independent Review Officer has the discretion to send a notification letter immediately modifying or restricting the person's access to our services (without prior written warning).

This notification letter will:

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<sup>4</sup> See pages 134-140 of the practice manual at:  
[https://www.ombo.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/125756/Managing-unreasonable-conduct-by-a-complainant-manual.pdf](https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0008/125756/Managing-unreasonable-conduct-by-a-complainant-manual.pdf)

- specify the date, time and location of the UC incident(s)
- explain why the person's conduct was clearly or reasonably perceived to be problematic
- identify the modification and/or restriction that will be imposed and what it means for the person
- provide clear and full reasons for this modification and/or restriction
- specify the duration of the modification and/or restriction imposed (which will not exceed **12** months)
- indicate when the modification and/or restriction will be reviewed
- provide the name and contact details of the Manager or Director who the person can contact about the letter and/or to request a review of the decision
- be signed by the Independent Review Officer.

See [Appendix F - Sample letter notifying a person of a decision to change or restrict their access to IRO services](#).

### **7.5 Notifying relevant staff about access changes/restrictions**

The Independent Review Officer will notify relevant staff about any decisions to modify and/or restrict a person's access to our services, in particular any reception staff in cases where a person is prohibited from entering IRO premises.

The *Register of Restrictions* will be updated with a record outlining the nature of the modifications and/or restrictions imposed, and their duration, as will the IRO's database and case management system.

### **7.6 Continued monitoring/oversight responsibilities**

Once a person has been issued with a warning letter or notification letter, the Independent Review Officer, in consultation with the Director, Manager and any relevant staff members, will review the person's compliance with the restrictions:

- in the case of an Approved Lawyer, every 12 months
- in every other case, every 6 months to ensure that the person is complying with the restrictions and the arrangement is working
- on request by a staff member.

If the Independent Review Officer determines that the restrictions have been ineffective in managing the person's conduct or are otherwise inappropriate, a decision can be made to either modify the restrictions, impose further modifications and/or restrictions, or terminate the person's access to our services altogether.

## **8. REQUESTING A REVIEW OF A DECISION TO CHANGE OR RESTRICT ACCESS TO IRO SERVICES**

### **8.1 Right of review**

People the subject of a decision to modify and/or restrict their access to our services are entitled to request one review of that decision. This review will be undertaken by a Director or Manager who was not involved in the original decision to change or restrict the person's access, or if the person is or was an IRO Approved Lawyer, the review will be undertaken by a Director and/or the Independent Review Officer.

The staff member conducting the review will consider the person's arguments and personal circumstances, including cultural background and any vulnerability that the person may be

experiencing, along with all relevant records regarding the person's past conduct. The Director or Manager will make a recommendation to the Independent Review Officer as to whether any changes should be made to the person's access rights. The Independent Review Officer will make a final decision, and the person will be advised of the outcome of the request for review by letter which must be signed off by the Independent Review Officer.

Any materials/records relating to the review will be kept in the appropriate file.

If the person continues to be dissatisfied after the review process, they are entitled to seek an external review from the NSW Ombudsman. The Ombudsman may accept the review (in accordance with its administrative jurisdiction) to consider whether we have acted fairly, reasonably and consistently, and have observed the principles of good administrative practice including procedural fairness.

## **9. NON-COMPLIANCE WITH A CHANGE OR RESTRICTION ON ACCESS TO OUR SERVICES**

### **9.1 Recording and reporting incidents of non-compliance**

All staff members are responsible for recording and reporting incidents of non-compliance by people who interact with the IRO. This should be recorded in a file note in the Resolve Case Management System and a copy forwarded to the Independent Review Officer who will decide whether any action needs to be taken to further modify and/or restrict the person's access to our services.

## **10. PERIODIC REVIEWS OF ALL CASES WHERE THIS POLICY IS APPLIED**

### **10.1 Period for review**

All cases where this Policy is applied should be reviewed every six months (depending on the nature of the service provided), and not more than **12** months after the service modification and/or restriction was initially imposed or continued/upheld.

In the case of a lawyer, the review will be conducted in accordance with the audit and review process described in the *Application and Agreement to be an IRO Approved Lawyer*.

### **10.2 Notifying the person of an upcoming review**

The person concerned will be invited to participate in the review process unless it is determined that such an invitation is likely to provoke further problematic conduct by the person. The invitation will be communicated and the review conducted in accordance with the access modifications and/or restrictions that have been applied to the person (e.g. if contact has been restricted to writing only, then the invitation to participate will be done in writing). See [Appendix G - Sample letter notifying an upcoming review](#).

### **10.3 Criteria to be considered during a review**

When conducting a review, the Independent Review Officer will consider:

- whether the person has had any contact with the IRO during the restriction period
- the person's conduct in any interactions with the IRO during the restriction period
- any information/arguments put forward by the person for consideration in the review
- in the case of a lawyer, the lawyer's fulfilment of approval requirements
- any other information that may be relevant in the circumstances.

The Independent Review Officer may also consult any staff members who have had contact with the person during the restriction period.

**Note** – Sometimes a person may not have a reason to contact our Office during their restriction period. As a result, a review decision that is based primarily on the fact that the person has not contacted the

IRO during their restriction period (apparent compliance with our modification and/or restriction) may not paint an accurate picture of their level of compliance/reformed behaviour. This should be taken into consideration where relevant.

See [Appendix H - Sample checklist for reviewing a decision regarding an access change/restriction](#).

#### **10.4 Notifying the applicant of the outcome of a review**

The Independent Review Officer will notify the applicant of the outcome of their review using the appropriate/relevant method of communication as well as a written letter or email explaining the outcome, as applicable. The review letter/email will:

- briefly explain the review process
- identify the factors that have been taken into account in the review, and
- explain the decision/outcome of the review and the reasons for it.

If the outcome of the review is to maintain or change the modification and/or restriction, the review letter/email will **also**:

- indicate the nature of the new or continued modification and/or restriction
- state the duration of the new restriction period
- provide the name and contact details of the relevant Director or Manager who the person can contact to discuss the contents of the letter/email, and
- be signed by the Independent Review Officer.

See [Appendix I - Sample letter advising the person of the outcome of a review](#).

#### **10.5 Recording the outcome of a review and notifying relevant staff**

Like all other decisions made under this Policy, the Independent Review Officer is responsible for ensuring a record of the outcome of any review will be kept, the Restrictions Register updated, and all relevant staff are notified of the outcome of the review, particularly if the modification and/or restriction has been withdrawn.

See **Parts 4.2** and **7.5** above.

## **11 MANAGING STAFF STRESS**

### **11.1 Staff reactions to stressful situations**

Dealing with people who are demanding, abusive, aggressive or violent can be extremely stressful and, at times, distressing or even frightening for all our staff, both experienced and inexperienced. It is perfectly normal to get upset or experience stress when dealing with difficult situations.

As an organisation, the IRO has a responsibility to support staff members who experience stress as a result of situations arising at work, and management are committed to doing their best to provide staff with debriefing and counselling opportunities, whenever needed. However, to do this, we also need the help of all staff to identify stressful incidents and situations. As a result, all staff have a responsibility to notify their Director or Manager of UC incidents and any other stressful incidents that they believe require management involvement.

### **11.2 Debriefing**

Debriefing means talking things through following a difficult or stressful incident. It is an important way of 'off-loading' or dealing with stress. Many staff members naturally do this with colleagues after a difficult telephone call, but debriefing can also be done with a Manager or Director, or as a team following a significant incident. All staff are encouraged to engage in an appropriate level of debriefing, when they or their Manager feel this would be of assistance.

Staff may also access an external professional service on a 'needs' basis. All staff can access the Employee Assistance Program – a free, confidential counselling service. To make an appointment call: 1300 360 364. Information about this service is available on the [DCS intranet](#).

## **12 OTHER REMEDIES**

### **12.1 Compensation for injury**

Any staff member who suffers injury in the course of their work as a result of aggressive behaviour by a person seeking, receiving, or who previously received a service provided by the IRO is entitled to make a workers compensation claim. The IRO will assist wherever possible in processing claims. Any staff member who is the victim of an assault may also be able to apply for compensation under the *Victims Rights and Support Act 2013* (NSW).

### **12.2 Compensation for damage to clothing or personal effects**

Where damage is suffered to clothing or personal effects as a result of aggression by a person referred to in paragraph 12.1 above, compensation may be sought. Staff may speak to their Manager or Director, or contact the [DCS Governance, Risk and Performance Team](#).

### **12.3 Legal assistance**

If a staff member is physically attacked or is a victim of employment generated harassment and the police do not lay charges, the Independent Review Officer will consider providing reasonable legal assistance if the staff member wishes to take civil action.

### **12.4 Threats outside the office or outside working hours**

Where threats are directed at a particular staff member by a person referred to at 12.1 above, and it appears that those threats may be carried out outside normal working hours or outside the Office, the staff member will receive the support of the IRO. This includes threats made online, including via social media. Requests for such assistance should be made to the relevant Director or the Independent Review Officer.

### **12.5 Escorts home**

When a staff member fears for their safety following a threat from a person referred to at 12.1 above, another staff member may accompany them home or the IRO can meet the cost of the staff member going home in a taxi. Staff may ask their Manager or Director for more information.

### **12.6 Telephone threats on personal numbers**

If a staff member or their family have been harassed by telephone at their home and they believe it is connected with their employment, they may apply to have the IRO meet the cost of having their telephone number changed and/or made silent. The staff member should also contact their telephone carrier, as it may provide an interception/monitoring service.

If assistance is approved, the IRO will meet the cost incurred for a period up to 12 months. Once approval is given, the staff member is responsible for making the necessary arrangements and will be reimbursed after producing a paid account.

Applications for reimbursement must be approved by the Director or the Independent Review Officer.

### **12.7 Other security measures**

If other security measures are necessary, the IRO will consider providing all reasonable support to ensure the safety and welfare of staff.

### 13. TRAINING AND AWARENESS

The IRO is committed to ensuring that all staff are aware of and know how to use this Policy. The IRO will ensure that all staff who deal with members of the public in the course of their work have received appropriate training on managing UC, either before their appointment to a position in the IRO or as soon as practicable afterwards. Refresher training will be provided to staff every six months.

### 14. OMBUDSMAN MAY REQUEST COPIES OF OUR RECORDS

The IRO will keep records of all cases where this Policy is applied, including a record of the total number of cases where it is used every year. This data may be requested by the Ombudsman to conduct an overall audit and review in accordance with its administrative functions and/or to inform its work on managing unreasonable conduct by complainants.

### 15. POLICY REVIEW

All staff are responsible for forwarding any suggestions they have in relation to this Policy to the Independent Review Officer, who will review the Policy every two years in consultation with the IRO staff, Directors and Managers.

### 16. SUPPORTING DOCUMENTS AND POLICIES

#### 16.1 Statement of compliance

This Policy is compliant with and supported by the following documents:

- Department of Customer Service *Work Health Safety Policy 2015* (originally issued by the Department of Finance, Service and Innovation)
- *IRO Complaints and Compliments Policy* and procedures
- NSW Ombudsman *Managing unreasonable conduct by a complainant: A manual for frontline staff, supervisors and senior managers (3<sup>rd</sup> edition)*<sup>5</sup>
- NSW Ombudsman Fact Sheet: *Smart complaining* (which gives advice to complainants about the things to avoid when making complaints and interacting with complaint handlers)<sup>6</sup>
- NSW Ombudsman Fact Sheet: *The importance of respect in effective complaint handling*<sup>7</sup>
- *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*.

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<sup>5</sup> [https://www.ombo.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/125756/Managing-unreasonable-conduct-by-a-complainant-manual.pdf](https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0008/125756/Managing-unreasonable-conduct-by-a-complainant-manual.pdf)

<sup>6</sup> <https://www.ombo.nsw.gov.au/Find-a-publication/publications/fact-sheets/state-and-local-government/smart-complaining-information-sheet>

<sup>7</sup> <https://www.ombo.nsw.gov.au/Find-a-publication/publications/fact-sheets/state-and-local-government/the-importance-of-respect-in-effective-complaint-handling>

**Document control**

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**Document approval**

<b>Name and Position</b>	<b>Date Approved</b>
Simon Cohen	24 October 2022

## Appendix A - Individual rights and mutual responsibilities of people receiving the services of the IRO and the staff of the Independent Review Officer

The IRO must ensure that all people seeking or receiving its services are dealt with fairly, equitably, efficiently and effectively, and that occupational health and safety standards and duty of care obligations to staff are adhered to. To achieve this, the IRO has adopted the following guidance developed by the NSW Ombudsman on rights and responsibilities of complainants as the standard of conduct expected of:

- people seeking or receiving the services of the IRO, and
- the staff of the Independent Review Officer.

### The NSW Ombudsman's 'Individual Rights and Mutual Obligations of the Parties to a Complaint'<sup>8</sup>, adopted by IRO

#### Individual rights<sup>1</sup>

##### Complainants have the right:

- to make a complaint and to express their opinions in ways that are reasonable, lawful and appropriate, regardless of cultural background, national origin, sex, sexual orientation, gender expression, disability or other cultural or personal characteristics<sup>2</sup>
- to a reasonable explanation of the organisation's complaints procedure, including details of the confidentiality, secrecy and/or privacy rights or obligations that may apply
- to a fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the case<sup>3</sup>
- to a fair hearing<sup>4</sup>
- to a timely response
- to be informed in at least general terms about the actions taken and outcome of their complaint<sup>5</sup>
- to be given reasons that explain decisions affecting them
- to at least one right of review of the decision on the complaint<sup>6</sup>
- to be treated with courtesy and respect
- to communicate valid concerns and views without fear of reprisal or other unreasonable response.<sup>7</sup>

##### Staff have the right:

- to determine whether, and if so how they can assist a complaint to be dealt with
- to finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances<sup>8</sup>
- to expect honesty, cooperation and reasonable assistance from complainants
- to expect honesty, cooperation and reasonable assistance from organisations and people within jurisdiction who are the subject of a complaint
- to be treated with courtesy and respect
- to a safe and healthy working environment<sup>9</sup>
- to modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.<sup>10</sup>

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<sup>8</sup> [https://www.ombo.nsw.gov.au/data/assets/pdf\\_file/0004/128092/Managing-unreasonable-complainant-conduct-a-model-policy.pdf](https://www.ombo.nsw.gov.au/data/assets/pdf_file/0004/128092/Managing-unreasonable-complainant-conduct-a-model-policy.pdf)



## **Subjects of a complaint have the right:**

- to a fair and impartial assessment and, where appropriate, investigation of the allegations made against them
- to be treated with courtesy and respect by staff
- to be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated<sup>11</sup>
- to be informed about the substance of any proposed adverse comment or decision
- to be given a reasonable opportunity to put their case during the course of any investigation and before any final decision is made<sup>12</sup>
- to be told the outcome of any investigation into allegations about their conduct, including the reasons for any decision or recommendation that may be detrimental to them
- to be protected from harassment by disgruntled complainants acting unreasonably.

## **Mutual responsibilities**

### **Complainants are responsible for:**

- treating staff members with dignity, courtesy and respect
- to the best of their ability, clearly identifying the issues of complaint, or asking for help from staff members to assist them in doing so
- to the best of their ability, providing the IRO with all the relevant information available to them at the time of making the complaint
- being honest in all communications with the IRO
- informing the IRO of any other action they have taken in relation to their complaint<sup>13</sup>
- cooperating with the staff who are assigned to assess/investigate/resolve/determine or otherwise deal with their complaint.

If complainants do not meet their responsibilities, the IRO may consider placing limitations or conditions on their ability to communicate with staff or access certain services.

The IRO has a zero-tolerance policy in relation to any harm, abuse or threats directed towards its staff. Any conduct of this kind may result in a refusal to take any further action on a complaint or to have further dealings with the complainant.<sup>14</sup> Any such conduct of a criminal nature will be reported to police and, in certain cases, legal action may also be considered.

### **Staff are responsible for:**

- providing reasonable assistance, including cultural and linguistic assistance, to complainants who need help to make a complaint and, where appropriate, during the complaint process
- dealing with all complaints, complainants and people or organisations the subject of complaint professionally, fairly and impartially
- giving complainants or their advocates a reasonable opportunity to explain their complaint, subject to the circumstances of the case and the conduct of the complainant
- giving people or organisations the subject of complaint a reasonable opportunity to put their case during the course of any investigation and before any final decision is made<sup>15</sup>
- informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them<sup>16</sup> and the substance of any proposed adverse comment or decision that they may need to answer or address<sup>17</sup>
- keeping complainants informed of the actions taken and the outcome of their complaints<sup>18</sup>
- giving complainants reasons that are clear and appropriate to their circumstances and adequately explaining the basis of any decisions that affect them
- treating complainants and any people the subject of complaint with courtesy and respect at all times and in all circumstances

- taking all reasonable and practical steps to ensure that complainants<sup>19</sup> are not subjected to any detrimental action in reprisal for making their complaint<sup>20</sup>
- giving adequate warning of the consequences of unacceptable behaviour.

If the Independent Review Officer or staff fail to comply with these responsibilities, complainants may complain to the NSW Ombudsman.

**Subjects of a complaint are responsible for:**

- cooperating with the staff members who are assigned to handle the complaint, particularly where they are exercising a lawful power in relation to a person or body within their jurisdiction<sup>21</sup>
- providing all relevant information in their possession to the IRO or its authorised staff when required to do so by a properly authorised direction or notice
- being honest in all communications with the Independent Review Officer and staff
- treating staff members with courtesy and respect at all times and in all circumstances
- refraining from taking any detrimental action against the complainant<sup>22</sup> in reprisal for them making the complaint.<sup>23</sup>

If subjects of a complaint fail to comply with these responsibilities, action may be taken under relevant laws and/or codes of conduct.

**The IRO is responsible for:**

- having and maintaining an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording and reviewing complaints
- making decisions about how all complaints will be dealt with
- ensuring that all complaints are dealt with professionally, fairly and impartially<sup>24</sup>
- ensuring that staff treat all parties to a complaint with courtesy and respect
- ensuring that the assessment and any inquiry into the investigation of a complaint is based on sound reasoning and logically probative information and evidence
- finalising complaints on the basis of outcomes that the organisation, or its responsible staff, consider to be satisfactory in the circumstances<sup>25</sup>
- implementing reasonable and appropriate policies/procedures/practices to ensure that complainants<sup>26</sup> are not subjected to any detrimental action in reprisal for making a complaint,<sup>27</sup> including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints
- giving adequate consideration to any confidentiality, secrecy and/or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.

If the IRO fails to comply with these responsibilities, complainants may complain to the NSW Ombudsman.

## ENDNOTES

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<sup>1</sup> The word 'rights' is not used here in the sense of legally enforceable rights (although some are), but in the sense of guarantees of certain standards of service and behaviour that a complaint handling system should be designed to provide to each of the parties to a complaint.

<sup>2</sup> Differences of opinion are normal: people perceive things differently, feel things differently and want different things. People have a right to their own opinions, provided those opinions are expressed in acceptable terms and in appropriate forums.

<sup>3</sup> While degrees of independence will vary between complaint handlers, all should assess complaints fairly and as impartially as possible, based on a documented process and the merits of the case.

<sup>4</sup> The 'right to be heard' refers to the opportunity to put a case to the complaint handler/decision-maker. This right can be modified, curtailed or lost due to unacceptable behaviour, and is subject to the complaint handler's right to determine how a complaint will be dealt with.

<sup>5</sup> Provided this will not prejudice on-going or reasonably anticipated investigations or disciplinary/criminal proceedings.

<sup>6</sup> Such a right of review can be provided internally to the organisation, for example by a person not connected to the original decision.

<sup>7</sup> Provided the concerns are communicated in the ways set out in relevant legislation, policies and/or procedures established for the making of such complaints/allegations/disclosures/etc.

<sup>8</sup> Some complaints cannot be resolved to the complainant's satisfaction, whether due to unreasonable expectations or the particular facts and circumstances of the complaint [see also Endnote 25].

<sup>9</sup> See for example WH&S laws and the common law duty of care on employers.

<sup>10</sup> Unacceptable behaviour includes verbal and physical abuse, intimidation, threats, etc.

<sup>11</sup> Other than where there is an overriding public interest in curtailing the right, for example where to do so could reasonably create a serious risk to personal safety, to significant public funds, or to the integrity of an investigation into a serious issue. Any such notifications or opportunities should be given as required by law or may be timed so as not to prejudice that or any related investigation.

<sup>12</sup> Depending on the circumstances of the case and the seriousness of the possible outcomes for the person concerned, a reasonable opportunity to put their case, or to show cause, might involve a face to face discussion, a written submission, a hearing before the investigator or decision maker, or any combination of the above.

<sup>13</sup> For example, whether they have made a similar complaint to another relevant person or body or have relevant legal proceedings on foot.

<sup>14</sup> Other than in circumstances where the organisation is obliged to have an ongoing relationship with the complainant.

<sup>15</sup> See Endnote 11.

<sup>16</sup> Other than where an allegation is so lacking in merit that it can be dismissed at the outset.

<sup>17</sup> See Endnote 11.

<sup>18</sup> See Endnote 5.

<sup>19</sup> 'Complainants' include whistleblowers/people who make internal disclosures.

<sup>20</sup> 'Complaints' includes disclosures made by whistleblowers/people who make internal disclosures.

<sup>21</sup> This does not include any obligation to incriminate themselves in relation to criminal or disciplinary proceedings, unless otherwise provided by statute.

<sup>22</sup> See Endnote 19.

<sup>23</sup> See Endnote 20.

<sup>24</sup> See Endnote 3.

<sup>25</sup> Once made, complaints are effectively 'owned' by the complaint handler who is entitled to decide (subject to any statutory provisions that may apply) whether, and if so how, each complaint will be dealt with, who will be the case officer/investigator/decision-maker/etc, the resources and priority given to actioning the matter, the powers that will be exercised, the methodology used, the outcome of the matter, etc. Outcomes arising out of a complaint may be considered by the complaint handler to be satisfactory whether or not the complainants, any subjects of complaint or the organisation concerned agrees with or is satisfied with that outcome.

<sup>26</sup> See Endnote 19.

<sup>27</sup> See Endnote 20.

## Appendix B – Procedure for responding to abuse and threats of harm to self or others

### POLICY STATEMENT

The IRO is committed to the health, safety and welfare of all its staff members. This Appendix to the Unreasonable Conduct Policy and Procedure aims to provide all staff who take calls from members of the public with a consistent approach to dealing with complex interactions.

Some of the IRO's callers are experiencing vulnerability and may be suffering severe emotional, physical or financial hardship. A result of this may be that the caller exhibits difficult, abusive or threatening behaviour.

### POLICY FOR DEALING WITH PEOPLE USING ABUSIVE OR THREATENING LANGUAGE

#### Procedure:

- 1) In the event of a caller being abusive or threatening, staff are to advise the caller that:
  - such behaviour limits their ability to assist with the workers compensation issues and request they cease the inappropriate behaviour, and
  - that if the behaviour does not cease, IRO policy requires that the call be terminated.
- 2) Should a caller continue in the same manner, staff are to advise the caller that the IRO takes threats of violence/abuse seriously and, if such behaviour continues, IRO policy requires that the call be terminated.
- 3) If the caller continues with the behaviour, the call should be terminated.

Staff are free to terminate the call immediately if the caller is unreasonable.

#### After the call

- 1) Staff should notify their Manager or Director immediately after the call.
- 2) The Manager or Director should ensure the staff member is aware of the relevant avenues of assistance available (e.g. referral to the employee assistance program) and to offer a debriefing session if required.
- 3) If appropriate the staff member and Manager or Director should discuss notifying the police or insurer of the caller's behaviour and threats.
- 4) If the staff member is of the view that the caller still requires the services of the IRO, the staff member and Manager or Director should discuss options available to provide the caller with this assistance. This may involve the Manager or Director taking over the case or another staff member becoming involved.
- 5) Should the caller persist in this behaviour or continue to call on multiple occasions without there being a new complaint, the Director may recommend limits on their communication to email only in accordance with the procedures set out in **Part 5.4** and **Part 7** of this Policy.
- 6) The staff member is to document the call (if able) in the Resolve Case Management System.

## RESPONDING TO PEOPLE THREATENING HARM TO THEMSELVES OR TO OTHERS

### Procedure:

- 1) If a caller threatens self-harm or to harm others, the staff member is to complete a brief risk assessment by asking the following questions:
  - a) *You mentioned you are thinking about killing/harming yourself/others, I am very sorry to hear you are feeling like this. Are you actually planning to kill/harm yourself/others?*
  - b) *Have you thought about how you would do it?*
  - c) *Do you have a gun/knife (depending on their previous response) on you?*
  - d) *When are you planning to do this?*
- 2) If the caller makes veiled references to or threats of self-harm, suicide or harm to others, the staff member should question the caller as to whether these references were intentional, to either make the threat explicitly or deny that this was their intention or meaning.
- 3) Following an assessment, the staff member is to take the action noted below.
- 4) For every threat of harm or self-harm, staff members are strongly encouraged to speak to their Manager or Director.

### High risk

- 1) If the caller is thinking about suicide or harming another person and has a plan, means and timeframe, this is assessed as high risk.
- 2) For these callers, confirm whether their address in Resolve matches their current location. If there is no address for them in Resolve, ask for their current address.
- 3) Ask them, *'Is there someone with you who could give you immediate support?' 'Is there a friend, partner or doctor you could call?'*
- 4) The staff member should immediately speak to their Manager or Director about the call and threat. The Manager or Director will authorise additional action, including contact with relevant emergency services or the insurer. If neither is present in the Office, they can be contacted on their mobile. If they are both on leave, the staff member is to discuss the matter with the Independent Review Officer.
- 5) The staff member should call 000 and ask for an ambulance if the worker has already, or the staff member fears the worker is about to, self-harm.
- 6) The staff member should also call 000 and ask for the police and provide full details of the threatened harm.
- 7) In addition, the staff member may advise the insurer of what has occurred. In any circumstance where the threat is directed to the insurer or their staff, the insurer must be contacted.
- 8) If applicable, the staff member should suggest that the caller call Lifeline (13 11 14) or the suicide call-back service (1300 659 467) for immediate professional help.
- 9) After the above action has been taken, the staff member is to update their Manager or Director.

### Other matters which are not high risk

- 1) If there is no immediate plan by the caller to either harm or self-harm, the call is assessed as 'Not High Risk'. In such circumstances, the staff member is to:

- a) discuss the contact with their Manager or Director and consider whether any contact with emergency services or police is required.
- b) where appropriate, contact their insurer and advise them of the threat (wherever there is a threat to the insurer or their staff, the insurer must be contacted).
- c) suggest that the caller contacts their treating doctors/psychologist in order that they can assist them.
- d) consider passing the caller's contact details onto the Mental Health Team in their area (the Mental Health Line can provide this support on 1800 011 511).
- e) Consider suggesting that the caller call Lifeline (13 11 14) or the suicide call-back service (1300 659 467) for immediate professional help.
- f) Consider contacting the police assistance line (13 14 44) where it is not a life threatening or time critical emergency situation, you can report a potential crime over the phone.

## Appendix C - Sample UC incident form (restrictions to access)

This form should only be completed if you encounter unreasonable conduct (UC) and consider that steps may need to be taken to change or restrict a person's access to services provided by the IRO.

The completed form is to be sent electronically via Resolve to your *Manager and/or Director* within 24 hours of an UC incident. The *Manager or Director* will review the incident, and if action is to be taken to respond to and manage the person's conduct, they will consult with the Independent Review Officer who will make a final decision about any action.

Date: \_\_\_\_\_

Case officer's name: \_\_\_\_\_

Name of person concerned: \_\_\_\_\_ Case file number: \_\_\_\_\_

Details of the person's conduct/incident:

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Why do you consider this conduct to be unreasonable? For example, has it occurred before/repeatedly, caused significant disruptions to our organisation, has or could raise significant health and safety issues for our staff or other persons.

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What action, if any, have you taken to deal with/manage the person's conduct? For example, warning the person 'verbally' about their conduct, previous attempts to manage the behaviour etc.

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What do you think should be done to effectively manage the person's conduct?

Note – the final decision on the appropriate course of action will be made by the Independent Review Officer.

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Is there any other information that might be relevant to this case? Please include information on any personal or cultural background issues that may have affected the person's conduct. If necessary, attach any supporting documentation.

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## Appendix CA - Sample UC incident form (no restrictions to access)

This form should be completed if you encounter unreasonable conduct (UC) in order to record the conduct and to raise with your Manager and/or Director.

This form should **NOT** be used if you consider that restrictions to access should be imposed based on the UC (please use Appendix C 'Sample UC incident form' if you consider that steps may need to be taken to change or restrict a person's access to services provided by the IRO).

The completed form is to be sent electronically via Resolve to your *Manager and/or Director* within 24 hours of an UC incident.

Date: \_\_\_\_\_

Case officer's name: \_\_\_\_\_

Name of person concerned: \_\_\_\_\_ Case file number: \_\_\_\_\_

Details of the person's conduct/incident:

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Why do you consider this conduct to be unreasonable? For example, has it occurred before/repeatedly, caused significant disruptions to our organisation, has or could raise significant health and safety issues for our staff or other persons.

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What action, if any, have you taken to deal with/manage the person's conduct? For example, warning the person 'verbally' about their conduct, previous attempts to manage the behaviour etc.

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**Appendix D - Sample checklist for the [Manager/Director] to consider when recommending whether to modify and/or restrict a person's access**

- I have received a signed and completed incident form from the case officer(s) involved (attach copy).
- I have spoken with relevant case officer(s) to obtain further information, as needed.
- I have reviewed the record of the person concerned and all relevant information in it.
- I have referred to and considered **Part 7.2** Criteria to be considered which includes an assessment of the following:
  - The merits of the person's case \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - The person's circumstances \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - Any relevant jurisdictional or statutory issues  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - Proportionality in relation to the conduct and what triggered it  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - Any IRO, case officer or other staff member responsibility  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - Responsiveness, including previous conduct  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - Case officer's personal boundaries  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - Conduct that is unreasonable in all circumstances (assault, threats of harm etc.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Along with the case officer concerned *[and any other nominated senior officers]*, I have considered all reasonable options for managing the person's conduct, including those that do not involve modifying or restricting access to our services.

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- The person has been warned about their conduct in writing, and the letter has been signed by the Independent Review Officer if applicable.

**Decision of the Independent Review Officer**

- I have considered and agree with the recommendation of *[Manager/Director]* that the person's access to the IRO be modified or restricted.
- The person has been advised in writing, and by other culturally, linguistically, or personally appropriate means, of our decision to modify and/or restrict their access to the IRO, and the letter has been signed by me, as the Independent Review Officer (if applicable).
- A record of the assessment and decision about the person's conduct has been made and all relevant staff members have been notified of my decision.
- An electronic alert has been created in the IRO's Case Management System, Resolve, that notifies any staff dealing with this person of the nature of the conduct that caused us to be concerned, the nature of the modifications and/or restrictions that have been placed on their access, its duration, how staff are to deal with the person (including who they should direct any communications from the person to).

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## Appendix E - Sample warning letter

*[To be signed by the Independent Review Officer or nominated senior manager]*

Our reference: *[reference]*

Contact: *[case officer]*

Telephone: *[number]*

*[Date]*

*[Name of recipient]*

*[Address of recipient]*

Dear *[name of recipient]*

### **Your contact with the IRO**

You recently had *[state the form of contact – e.g. telephone, letter, email or face-to-face]* with staff at my office on *[date]*. *[During/In that telephone call/letter/email/meeting]*, I understand that you *[explain the nature of the conduct]* and my staff perceived your conduct to be *[explain the nature of the conduct that has caused the staff to be concerned]*.

We consider this type of behaviour to be inappropriate and it must stop. If you continue to behave in this way or in any other way that my staff consider to be unreasonable, we will impose modifications or restrictions on your contact with the IRO. This may involve modifying or restricting your contact to *[apply the relevant option(s)]*:

- 'Writing only' – this means that the IRO will only accept communications from you in writing, delivered by Australia Post *[if online or other written communications are preferred then explain]*.
- 'Telephone contact only' – this means that you will only be able to contact the IRO by telephone at a specified time and day of the week.
- 'Face-to-face contact only' – this means that your contact will be limited to scheduled face-to-face meetings with a specified staff member.

Or any other modification or restriction that we consider to be appropriate in the circumstances.

I have attached a copy of a NSW Ombudsman document called *Individual rights and mutual responsibilities of the parties to a complaint*<sup>9</sup> for your reference. We expect everyone who seeks to use any of the services of the IRO to act in the ways described in this document.

If you have any questions about this letter, contact *[provide name and phone number of the nominated senior manager]*.

Yours sincerely,

Independent Review Officer

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<sup>9</sup> At Appendix A in NSW Ombudsman's '*Managing unreasonable complainant conduct: A model policy*': [https://www.ombo.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/128092/Managing-unreasonable-complainant-conduct-a-model-policy.pdf](https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0004/128092/Managing-unreasonable-complainant-conduct-a-model-policy.pdf)

## Appendix F - Sample letter notifying a person of a decision to change or restrict their access to IRO services

*[To be signed by the Independent Review Officer or nominated senior manager]*

Our reference: *[reference]*

Contact: *[case officer]*

Telephone: *[number]*

*[Date]*

*[Name of recipient]*

*[Address of recipient]*

Dear *[name of recipient]*

### **Decision to restrict your contact with the IRO**

It has come to my attention that you *[describe the nature of the unreasonable conduct and its impact – e.g. if the person has been sending emails to several members of my staff on a daily basis...]*

I understand that my staff have previously told you that we consider this conduct to be unreasonable and unwarranted, and I wrote to you on *[date]* and asked you to stop this behaviour. In that letter I advised you that if your behaviour continued, your contact with the IRO would be restricted. At the time I also attached a copy of the NSW Ombudsman's *Individual rights and mutual responsibilities of the parties to a complaint*<sup>10</sup> and advised that this outlines your responsibilities when interacting with the IRO.

Because your behaviour has continued, I now consider it necessary to impose certain restrictions on your future contact with the IRO. I therefore give you notice that from *[date]*, and with the exception(s) detailed below, the IRO will only accept communication from you *[identify permissible form of contact]*.

### **What this means**

This means that you are only to contact the IRO using *[describe the restriction in further details]*. Any communications that do not comply with this restriction will be *[describe what will happen – e.g. phone calls will be terminated immediately or emails/written communications will be read and filed without acknowledgment, emails will be blocked or deleted, no interviews will be granted, etc]*. *[Note: the person should be clearly informed how they can contact the IRO and how the IRO will contact them]*.

### **Your existing matter (if applicable)**

The IRO currently has one file open in your name. This relates to *[state the subject of matter and describe complaint]*. This file is being handled by *[name of officer and position title]*. While you are able to contact *[name of officer]* *[state nature of contact – e.g. by email]* about this specific matter, all other contact with the IRO, including any future matters, must be *[state restriction – e.g. in writing through Australia Post]* *[provide the postal address of the IRO]*.

### **Review of this decision**

My decision to restrict your contact with the IRO is effective immediately and will last for *[6 months/12 months]*. Prior to that time, we will review your restriction and decide if it should be

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<sup>10</sup> At Appendix A in NSW Ombudsman's 'Managing unreasonable complainant conduct: A model policy': [https://www.ombo.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/128092/Managing-unreasonable-complainant-conduct-a-model-policy.pdf](https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0004/128092/Managing-unreasonable-complainant-conduct-a-model-policy.pdf)

maintained, amended or withdrawn. I take these steps with the greatest reluctance, but *[state reason for restriction – e.g. the equity and safety of staff and others]*, leaves me no alternative.

If you have any questions about this letter, you can contact *[provide name and phone number of the nominated senior manager]*.

Yours sincerely,

Independent Review Officer

## Appendix G - Sample letter notifying a person of an upcoming review

*[To be signed by the Independent Review Officer or nominated senior manager]*

Our reference:        *[reference]*  
Contact:                *[case officer]*  
Telephone:            *[number]*

*[Date]*

*[Name of person]*

*[Address of person]*

Dear *[name of person]*

### **Upcoming review of the decision to restrict your contact with the IRO**

It has now been *[6 months/12 months]* since restrictions were *[imposed/upheld]* on your contact with the IRO. As advised in our letter dated *[date]*, we are now reviewing our decision to ascertain whether the restrictions should be maintained, amended or withdrawn.

We consider it important to give you an opportunity to participate in the review process, so we are therefore inviting you to *[apply the relevant option(s)]*:

- make submissions in writing through Australia Post *[include contact person's name and address]*
- schedule a face-to-face interview with *[include name of staff member and provide instructions on how they should go about scheduling the appointment – e.g. calling though the reception line on xxx-xxx-xxxx]*
- schedule a telephone interview with *[include name of staff member and provide instructions on how they should go about scheduling the appointment – e.g. calling though the reception line on xxx-xxx-xxxx]*

In your letter, you should include information that would be relevant to our review. This includes information about whether *[.....]*/During the interview which will not last more than 30 minutes, we will discuss whether:

- you have complied with the current contact restrictions
- the current contact restrictions should be removed
- the current contact restrictions should be amended to better suit your personal circumstances
- the current contact restrictions should be maintained
- any other information should be considered, that is relevant to our decision.

We must receive your letter by *[time and date]*/you should confirm your interview with *[name of case officer]* by *[time and date]*. If we do not receive it/hear from you by this date, we will assume that you do not wish to participate in this review and will undertake the review based on the information that we have available to us.

Once the review is completed, we will contact you again by letter notifying you of our decision. If you have any questions about this letter, you can contact *[provide name and phone number of the nominated senior manager]*.

Yours sincerely,

Independent Review Officer

## Appendix H - Sample checklist for reviewing a decision regarding an access change/restriction

- The person has been sent a letter, or if necessary has been contacted by a more culturally or linguistically appropriate means, notifying them of the review.
- The person will/will not participate in the review.
- The person has/has not scheduled a face-to-face interview.
- The person has/has not made written submissions.
- The person has/has not scheduled a telephone interview.
- I have reviewed all the information in the *[case management system]* from the last 12 months *[or relevant period of the restriction]* about the person's:
  - contact with the office (explain form of contact)  
\_\_\_\_\_  
\_\_\_\_\_
  - conduct during that contact (explain if conduct reasonable or unreasonable)  
\_\_\_\_\_  
\_\_\_\_\_
- I have spoken with the case officers who have had contact with the person during the last 12 months about the person's conduct during that period.
- I have considered the arguments/statements made by the person, including the impact of the restrictions on them (explain person's position, including if their circumstances have changed etc.). *Note: if the person is arguing that their circumstances have changed, they should be required to submit evidence to support this claim.*  
\_\_\_\_\_  
\_\_\_\_\_
- I have considered whether there are other more reasonable/suitable options for managing the person's conduct, including those that do not involve restricting their access to IRO services (list all that apply).  
\_\_\_\_\_  
\_\_\_\_\_
- I consider that the restriction should be (explain):
  - maintained – e.g. *because the conduct has continued or is likely to continue, is disproportionate etc.*
  - removed – e.g. *because the person has complied with the restrictions etc.*
  - amended – e.g. *because the person's circumstances have changed and the current restriction is no longer appropriate.*  
\_\_\_\_\_  
\_\_\_\_\_
- I have discussed my recommendation with *[other nominated senior officers]*.
- The person has been advised in writing of my decision to maintain/remove/ amend the restriction and this letter has been signed by the *(Independent Review Officer)*.
- The *[case management system]* has been updated to reflect my decision.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## Appendix I - Sample letter advising the person of the outcome of a review

*[To be signed by the Independent Review Officer or nominated senior manager]*

Our reference: *[reference]*

Contact: *[case officer]*

Telephone: *[number]*

*[Date]*

*[Name of person]*

*[Address of person]*

Dear *[name of person]*

### **Review of your contact with the IRO**

I am writing about a review that was undertaken by the IRO on *[date]* concerning your contact with this office. I understand that you *[participated/did not participate]* in that review.

### **Process of review**

During the review you were given an opportunity to *[explain in general terms how the review was undertaken]*.

### **Considerations**

After your *[interview/reading your submissions]*, we considered the concerns and suggestions raised in your *[interview/letter, etc.]*, particularly your concerns about *[include information that would be relevant – e.g. the complainant said their circumstances had changed]*. We also reviewed our records of your conduct and contact with the IRO over the last 12 months. Our records showed that *[provide summary of relevant information – e.g. Our records show that you have continued to send emails to the IRO, sometimes up to four times a day, throughout the period of your restriction]*.

*[apply if relevant]*: These communications were in direct violation of your restriction which limited your contact with the IRO to *[state nature of restriction]* *[explain what the purpose of the restriction was, if appropriate, and the impact of their conduct]*.

*[apply if relevant]*: Our records show that you have complied with the restrictions that were imposed on your contact with the IRO.

### **Decision**

*[apply if relevant]*: Due to *[explain reasoning for the decision – e.g. the number of emails that you have sent to our organisation in the last 12 months and ...]* I consider it necessary to maintain the restrictions on your contact with the IRO for a further 12 months, effective immediately.

*[apply if relevant]*: Due to *[explain reasoning for the decision]* I consider it necessary to amend the restrictions on your access to better suit your personal circumstances *[explain, including providing clear instructions on how the person is to contact us and how we will contact them]*. The new restrictions will be effective immediately and will last for 12 months. If your circumstances change again during this period, you may *[explain how the person can notify of the change]*.

*[apply if relevant]*: Due to *[explain reasoning for the decision]* I consider it appropriate to remove the restrictions that have been placed on your access with the IRO, effective immediately. You may contact the IRO using any of our normal servicing options.

If you have any questions about this letter, you can contact *[provide name and phone number of the nominated senior manager]*.

Yours sincerely

Independent Review Officer